

APPENDIX 19 – CONTRACT

Contract Number K_____

Dated _____, 2009

For

**Toll Collection System
Supply, Installation, and Maintenance**

**Between the
Washington State Department of Transportation
and
_____ {Vendor} _____**

TABLE OF CONTENTS

ARTICLE I. RECITALS	6
ARTICLE II. DEFINITIONS; PURPOSE; ALTERNATE PURCHASE METHODS NOT PRECLUDED; TERM	7
2.1 Definitions.....	7
2.2 Purpose.....	7
2.3 Alternate Purchases Methods Not Precluded.....	7
2.4 Term and Extensions.....	7
ARTICLE III. USE OF WSDOT REAL PROPERTY	7
3.1 Project Permits and Approvals.....	7
3.2 Entry onto WSDOT Property.....	8
ARTICLE IV. WORK SEGMENTS.....	8
ARTICLE V. SUPPLY AND INSTALLATION WORK SEGMENT	9
5.1 Scope of Work and Deliverables.....	9
5.2 Adjustment to Guaranteed Dates.....	9
5.3 Traffic Control.....	10
5.4 Compensation and Payment Milestones.....	11
5.5 Liquidated Damages.....	12
5.6 Vendor Staff.....	14
5.7 WSDOT Staff.....	14
5.8 Additional Terms and Conditions Specific to the Supply and Installation Segment of Work.....	15
VI. WARRANTY AND MAINTENANCE WORK SEGMENT	15
6.1 Term and Extensions.....	15
6.2 Maintenance.....	15
6.3 Warranties.....	15
6.5 Transition Training.....	16
6.6 Software Upgrades and Enhancements.....	16
6.7 Compensation.....	16
ARTICLE VII. PRICING; INVOICE; PAYMENT.....	19
7.1 Price.....	19
7.2 Taxes.....	20
7.3 Invoices and Payment.....	20
ARTICLE VIII. CONTRACT BOND (PERFORMANCE AND PAYMENT BOND).....	21
ARTICLE IX. VENDOR'S RESPONSIBILITIES	22
9.1 Prompt Work.....	22
9.2 Qualified Workers.....	22
9.3 Delivery.....	22
9.4 Parts Availability.....	23
9.5 Shipping and Risk of Loss.....	23
9.6 Installations.....	23
9.7 Site Security.....	24
9.8 Coordination and Cooperation.....	24
9.9 Licensing Standards.....	24

9.10	Compliance Requirements.....	24
9.11	Plan Certification.....	25
9.12	Maintenance and Use of Data.....	25
9.13	Delivery Schedule.....	25
9.14	Work Site Obligations.....	25
9.15	Public Work.....	25
ARTICLE X. SUBCONTRACTING		26
ARTICLE XI. TREATMENT OF ASSETS.....		26
ARTICLE XII. CONTRACT MANAGEMENT AND ADMINISTRATION		27
12.1	Notices.....	27
12.2	Vendor Project Manager.....	28
12.3	WSDOT Project Manager.....	28
12.4	WSDOT Contract Administrator.....	29
ARTICLE XIII. INTELLECTUAL PROPERTY		29
13.1	Vendor Intellectual Property.....	29
13.2	Third Party Software.....	29
13.4	Software Code Escrow.....	30
13.5	Intellectual Property Indemnification.....	31
ARTICLE XIV. REPRESENTATIONS AND WARRANTIES		32
14.1	Vendor Commitments, Warranties and Representations.....	32
14.2	Covenant Against Contingent Fees.....	32
14.3	OSHA/WISHA.....	32
ARTICLE XV. INDEMNITY; INSURANCE.....		32
15.1	Indemnification.....	32
15.2	Insurance.....	33
ARTICLE XVI. TERMINATION		35
16.1	Termination for Default.....	35
16.2	Termination by WSDOT.....	36
16.3	Termination Procedure.....	37
ARTICLE XVII. DISPUTES AND REMEDIES.....		38
17.1	Dispute Resolution.....	38
17.2	Continuity of Service.....	39
17.3	Performance by WSDOT.....	39
17.4	Non-Exclusive Remedies.....	40
17.5	Late Payment Fees.....	40
17.6	Limitation of Liability.....	40
ARTICLE XVIII. AUDITS AND RECORDS.....		41
18.1	Auditing Requirements.....	41
18.3	Public Records.....	42
ARTICLE XIX. GENERAL		44
19.1	Recitals.....	44
19.2	Exhibits and Attachments.....	44
19.3	RFP and Proposal.....	44
19.4	Survivorship.....	44
19.5	Assignments.....	44
19.6	Publicity.....	44

19.7	Independent Status of Vendor.	45
19.8	Entire Agreement.	45
19.9	Modifications and Amendments.	45
19.10	Waiver.	45
19.11	Severability.	46
19.12	Governing Law.	46
19.13	Order of Precedence.	46
19.15	Antitrust Violations.	47
19.16	Attorneys' Fees and Costs.	47
19.17	Contract Execution.	47
19.18	Counterparts.	47

EXHIBIT LIST

Exhibit A: Performance Measures

Exhibit B: Sample Contract Bond

Exhibit C: Software License

Exhibit D: Escrow Agreement

AGREEMENT

This CONTRACT NUMBER K_____ FOR TOLL COLLECTION SYSTEM SUPPLY, INSTALLATION, AND MAINTENANCE is made and entered into by and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, an agency of the State of Washington (**WSDOT**), and ___{vendor}___ (**Vendor**), a _____ corporation, licensed to do business in the State of Washington (**Contract**).

ARTICLE I. RECITALS

1.1 The state route 520 corridor located between the junctions of Interstate 5 and state route 202 (**SR 520 Corridor**) has been designated by the Washington State Legislature as a toll facility. Engrossed Substitute H.B. 2211, 61st Leg., Reg. Sess., §2(1)(Wash. 2009) (**ESHB 2211**). WSDOT is presently authorized to impose tolls on the floating bridge portion of the SR 520 Corridor (**SR 520 Bridge**).

1.2 WSDOT seeks to implement a toll collection system on the SR 520 Bridge.

1.3 WSDOT issued a Request for Proposal ACQ-2009-0530-RFP, dated June 15, 2009, (**RFP**) for the purpose of soliciting vendors interested in providing proposals for the supply and installation of a toll collection system on the SR 520 Bridge.

1.4 Vendor submitted a timely proposal to the RFP. WSDOT evaluated all properly submitted proposals to the RFP and selected the proposal of Vendor.

1.5 WSDOT and Vendor have entered into this Contract pursuant to WSDOT's express reservations of all rights available to it by law in administering the RFP, including but not limited to the right to negotiate with a proposer without being bound by any provisions in its proposal. WSDOT finds that the terms and conditions as negotiated pursuant to such reservation of rights, and as set forth in this Contract, are within the scope of the RFP and remain more advantageous to WSDOT than those in any other proposal received in response to the RFP. In addition, WSDOT has determined that entering into this Contract with Vendor will meet WSDOT's needs and will be in WSDOT's best interest.

1.6 WSDOT has authority to enter into this Contract under ESHB 2211 and Ch. 43.105 RCW.

NOW, THEREFORE, in consideration of the covenants contained herein and for the other goods and valuable consideration, the receipt and adequacy of which are hereby acknowledged, WSDOT and Vendor agree as follows:

ARTICLE II. DEFINITIONS; PURPOSE; ALTERNATE PURCHASE METHODS NOT PRECLUDED; TERM

2.1 Definitions.

All capitalized terms used in this Contract but not expressly defined herein, have the respective meanings set forth in Appendix 1 to the RFP.

2.2 Purpose.

The purpose of this Contract is to establish a relationship between WSDOT and Vendor for the implementation of a Toll Collection System (**TCS**) on the SR 520 Bridge. This Contract sets forth the terms and conditions by which WSDOT will purchase and Vendor will provide **Products** and **Services** for the supply, installation, and maintenance of said TCS.

2.3 Alternate Purchases Methods Not Precluded.

Nothing in this Contract shall preclude WSDOT from purchasing Products and Services off-the-shelf or from Vendor pursuant to other contracts for which WSDOT is a qualified purchaser of off-the-shelf Products and Services. These other contracts include, but are not limited to other **State** or government contracts.

2.4 Term and Extensions.

The term of this Contract shall commence upon the last signature date (**Effective Date**) and terminate one (1) year after the date of **System Acceptance**, unless terminated early as provided elsewhere herein; Provided, that WSDOT shall have the right, at its sole option, to extend said term for nine (9) one-year periods. In addition, this term may be further extended upon the mutual written agreement of the parties and as set forth in an **Amendment**.

ARTICLE III. USE OF WSDOT REAL PROPERTY

3.1 Project Permits and Approvals.

3.1.1 Prior to entering onto any **Right of Way** for the purpose of testing, sampling, surveying or investigating the Right of Way or constructing, installing, repairing or replacing any portion of the **System**, Vendor shall apply for and obtain a **Permit** from WSDOT. To the extent feasible, the Permit shall be issued on a phase-by-phase basis and cover access to all of the Right of Way needed to complete the **Work** in the applicable Work segment. WSDOT reserves the right to impose such conditions and requirements in the Permits as it deems necessary to protect the health, safety and welfare of the public traveling on WSDOT highways, to protect the facilities on WSDOT highways, and to administer the Permits. Vendor shall satisfy and comply with all such conditions and requirements.

3.1.2 WSDOT hereby waives Permit fees; its rights to payments are exclusively governed by this Contract. The absence of a condition or requirement in a Permit concerning

cost reimbursement for WSDOT shall not waive or excuse any obligations of Vendor to pay any and all sums owing to WSDOT under this Contract.

3.2 Entry onto WSDOT Property.

3.2.1 Vendor shall not share with other persons or entities access by personnel or vehicles to any Right of Way; Provided that:

(a) Vendor may permit access by Vendor's **Subcontractors** during construction, subject to the terms and conditions of all Permits and other **Regulatory Approvals** and this **Article III**.

(b) Vendor may permit access by Vendor's service contractors via authorized Right of Way access points for the purpose of operating, administering, maintaining, repairing and replacing the Product, subject to the terms and conditions of all Permits and other Regulatory Approvals and this **Article III**; and

(c) WSDOT shall at all times have full rights of access to the Right of Way.

3.2.2 Vendor shall not use or occupy the roadway portion of the SR 520 Corridor to obtain access to the **Project** unless expressly approved (a) by WSDOT in writing, (b) in the Permit conditions, or (c) in the approved traffic control plan for that Work segment.

3.2.3 All installation, operations, and maintenance equipment of Vendor operating within any Right of Way shall be marked and all Vendor personnel shall wear colors, lettering, badges or other identifiers on clothing, to assure clear differentiation from operations and maintenance equipment owned by WSDOT and from uniforms worn by WSDOT employees.

ARTICLE IV. WORK SEGMENTS

4.1 There are two initial segments of Work for the Project: The supply and installation of the TCS for the SR 520 Bridge; and the warranty and maintenance of the TCS on the SR 520 Bridge.

4.2 WSDOT reserves the right to alter or forgo the deployment of any Work segment or element thereof to meet the needs of its transportation management program, accommodate safety and operational concerns, and to adjust to changes in funding availability.

4.3 The specific requirements of each initial segment of Work are set forth in **Articles V and VI** below.

4.4 Vendor shall not commence any Work on any segment of Work until the **WSDOT Project Manager** has issued a written **Notice to Proceed** to Vendor for the applicable segment.

4.5 Potential Additional Work Segments.

4.5.1 WSDOT may, at its sole discretion, amend the Contract to increase the scope of work to include the supply, installation, and maintenance of two (2) additional Systems on a newly constructed SR 520 bridge; Provided, that the Washington State Legislature authorizes additional tolling locations along the SR 520 Corridor. The Specifications for such additional Systems shall be identical to those installed on the SR 520 Bridge as set forth in the Contract on the Effective Date.

4.5.2 Each of the additional two (2) Systems would be for the purpose of toll collection on a new SR 520 bridge at one tolling location and would be procured separately pursuant to two (2) separate Contract Amendments. The Amendments would coincide with the following stages of work that WSDOT presently anticipates for the construction of the new SR 520 bridge: Stage 1 will include two (2) lanes eastbound and two (2) lanes westbound and is currently anticipated to be completed by 2016; and stage 2 will be constructed immediately following completion of stage 1 and will include an additional lane in each direction. For each construction stage WSDOT will provide the same infrastructure, equipment, and services as those described in the RFP.

4.5.3 The pricing for each of the additional Systems shall be as provided in the Price Proposal submitted by Vendor.

ARTICLE V. SUPPLY AND INSTALLATION WORK SEGMENT

5.1 Scope of Work and Deliverables.

5.1.1 Time is of the essence for this Contract. Failure to meet the **Guaranteed Dates** for the **Milestones** set forth in this Section may result in the assessment of liquidated damages as set forth in **Section 5.5** herein.

5.1.2 Vendor shall furnish all Products, cables and connections, installation, integration, testing, labor, personnel, transportation, materials, storage, tools, supplies, permits, licenses, equipment, and other Services necessary to supply and install, on a turnkey basis, a fully functional TCS for the SR 520 Bridge in accordance with Vendor's Proposal to the RFP. Vendor shall provide Services and staff, and otherwise do all things necessary for or incidental to the performance of the Work.

5.1.3 Operational Readiness. Subject to the other provisions of this Contract and unless modified in writing by WSDOT, the Guaranteed Date for the Operational Readiness Milestone shall be no less than ninety (90) **Calendar Days** prior to **Tolling Commencement**.

5.1.4 Tolling Commencement. Subject to the other provisions of this Contract and unless modified in writing by WSDOT, the Guaranteed Date for the Tolling Commencement Milestone shall be October 1, 2010.

5.2 Adjustment to Guaranteed Dates.

5.2.1 WSDOT-Caused Delay.

A. In the event Vendor believes WSDOT or any of its subcontractors have not furnished the infrastructure, equipment, or services specified in Appendix 2, Section 10 of the RFP, or have not performed the WSDOT obligations in this Contract in a timely manner such that WSDOT's delay causes a corresponding delay in Vendor achieving Operational Readiness or Tolling Commencement by the Guaranteed Dates set forth in **Section 5.4.3** herein, Vendor shall notify WSDOT of the such delay in writing within three (3) **Business Days** of the date Vendor knew or should have reasonably known under the circumstance of WSDOT or its subcontractor's alleged delay.

B. If WSDOT concurs with Vendor that its action or inactions caused a delay to Vendor achieving the Guaranteed Date(s) for Operational Readiness and/or Tolling Commencement, then WSDOT will establish a new Operational Readiness Guaranteed Date and/or Tolling Commencement Guaranteed Date, as applicable, and provide a response within three (3) Business Days of receipt of Vendor's notice submitted pursuant to **Section 5.2.1.A** above. The new Operational Readiness Guaranteed Date and/or Tolling Commencement Guaranteed Date, as applicable, shall be established by amending **Section 5.1.3** and/or **Section 5.1.4** herein, as applicable, and the Payment and Milestone Schedule set forth in **Section 5.4.3** herein.

C. If WSDOT does not concur with Vendor that its actions or inactions caused a delay to Vendor achieving the Guaranteed Date(s) for Operational Readiness and/or Tolling Commencement, as applicable, Vendor may submit a dispute under the Disputes and Remedies process in **Article XVII** of this Contract.

D. Vendor shall continue its performance of the Work in accordance with the Payment and Milestone Schedule to the extent able under the circumstances pending resolution of a delay claim under this Section.

E. Vendor shall keep full and complete records supporting the alleged WSDOT-caused delay of Operational Readiness and/or Tolling Commencement, as applicable, and shall permit WSDOT to have access to those records and any other records as may be deemed reasonably necessary by WSDOT to assist in evaluating Vendor's claim.

5.2.2 Vendor-Caused Delay. No adjustment in any Guaranteed Date will be made if the delay in Vendor's performance of the Work was caused by the fault or negligence of Vendor; Provided, that WSDOT may adjust a Guaranteed Date under such circumstances, if at its sole option and discretion WSDOT determines it is in the best interest of the State to do so; Further provided, that any such adjustments may be subject to additional conditions as deemed appropriate by WSDOT.

5.3 Traffic Control.

5.3.1 Traffic control, including but not limited to lane and ramp closures, during the Project shall be in accordance with the requirements in Appendix 3 of the RFP and this Section.

5.4.2 Prior to any lane or ramp closure, Vendor shall submit to WSDOT for approval a traffic control plan for all portions of Right of Way Vendor will need to access under

this Contract. Any such request for approval shall be given at least thirty (30) Calendar Days prior to the date the traffic control is needed.

5.3.3 In the event Vendor needs traffic control in addition to the closure allowances set forth in Appendix 3 of the RFP, Vendor shall be responsible for the costs incurred in developing, procuring, and providing such traffic control; provided, that such additional closures are not necessitated by the action or inactions of WSDOT or any of its subcontractors. Any lane or ramp closures in addition to the allowances set forth in Appendix 3 of the RFP are subject to the assessment of liquidated damages as set forth in **Section 5.5** herein

5.3.4 At all times any personnel of Vendor performs any activity, including operation of any vehicle, within Right of Way respecting the Project, Vendor shall cause such activity to comply with the applicable and approved WSDOT traffic control plans. In addition, Vendor shall have an approved set of the traffic control plans at the work site at such times work is being done on the Right of Way under this Contract.

5.4 Compensation and Payment Milestones.

5.4.1 Compensation. The total compensation to the Vendor for the Supply and Installation Work under this Contract shall not exceed the lump sum Price amount of _____ Dollars (\$_____).

5.4.2 WSDOT shall pay Vendor in accordance with the Payment and Milestone Schedule shown in **Section 5.4.3** below for the Work actually performed by Vendor and for which WSDOT has issued an Acceptance.

5.4.3 Payment and Milestone Schedule.

Milestone	Qualifying Event	Guaranteed Date	Payment Amount
Project Initiation	WSDOT approval of the following: <ul style="list-style-type: none"> ▪ Project Management Plan ▪ Quality Management Plan ▪ Software Development Plan ▪ Project Schedule ▪ Executed Contract Bond ▪ Insurance Certificates 	<i>To be completed by Vendor (shall be no later than thirty (30) Calendar Days after Notice to Proceed)</i>	\$ <i>No greater than 10 percent (10%) of the total installation price identified in selected Vendor's Price Proposal*</i>
Design Approval	WSDOT approval of the following: <ul style="list-style-type: none"> ▪ Preliminary Design Document ▪ System Design Document ▪ Master Test Plan ▪ RTCS Infrastructure Requirements Document 	<i>To be completed by Vendor</i>	\$ <i>A single amount to be completed by Vendor*</i>
Factory Acceptance Test	WSDOT approval of the following: <ul style="list-style-type: none"> ▪ Test Procedures ▪ Factory Acceptance Test Report 	<i>To be completed by Vendor</i>	\$ <i>A single amount to be completed by Vendor*</i>

Milestone	Qualifying Event	Guaranteed Date	Payment Amount
Installation Readiness	WSDOT approval of the following: <ul style="list-style-type: none"> ▪ Installation Plan ▪ Installation Drawings ▪ Shop Drawings ▪ Traffic Management Plan (TMP) ▪ Traffic Incident Management Plan (TIMP) ▪ MOT Plans ▪ Environmental Compliance Plan ▪ SPCC Plan ▪ Any Applicable Permits ▪ Noise Variance 	<i>To be completed by Vendor</i>	\$ <i>A single amount to be completed by Vendor**</i>
Operational Readiness	WSDOT approval of the following: <ul style="list-style-type: none"> ▪ Commissioning Test Report ▪ Interface Control Test Report 	<i>To be completed by Vendor</i>	\$ <i>A single amount to be completed by Vendor**</i>
Tolling Commencement	WSDOT approval of the following: <ul style="list-style-type: none"> ▪ Operational Test Completion Letter 	<i>To be completed by Vendor (shall be no later than October 1, 2010)</i>	\$ <i>A single amount to be completed by Vendor**</i>
System Acceptance	WSDOT approval of the following: <ul style="list-style-type: none"> ▪ Operational Test Report ▪ As-built Installation Drawing ▪ As-Built SDD ▪ Maintenance Plan ▪ Documentation described in RFP Appendix 3, Section 2.3 ▪ Certification from Washington State Department of Revenue that all taxes have been paid 	<i>To be completed by Vendor (shall be no later than thirty (30) Calendar Days following commencement of tolling on SR 520)</i>	\$ <i>No less than 20 percent (20%) of the total installation price identified in selected Vendor's Price Proposal</i>
TOTAL COMPENSATION (LUMP SUM PRICE)			\$

5.4.4 Modification to Payment and Milestone Schedule. Any modification to the Payment and Milestone Schedule shall be done by written Amendment executed by WSDOT and Vendor.

5.5 Liquidated Damages.

5.5.1 Failure to Meet Tolling Commencement Milestone Guaranteed Date.

A. Revenues from the System are needed to offset the real incremental costs to WSDOT of providing operations personnel, support equipment, marketing, public outreach, and contracted services (such as, incident response and law enforcement) in support of the SR 520 TCS. The actual amount of revenues to be realized from the operation of the SR 520 TCS is unknown at this time; however, a traffic and revenue study has provided an estimate for the SR 520 Bridge. If the initial deployment of the System is opened or completed behind schedule, WSDOT will not realize its budgeted and reasonably projected level of new revenues.

B. Any delay by Vendor in meeting the date defined in **Section 5.4.3** above will interfere with the proper implementation of the SR 520 TCS and will result in losses and damage to WSDOT. As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, WSDOT and Vendor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in **Section 5.5.1.D** below, and the parties agree that Vendor shall pay such amounts as liquidated damages and not as a penalty.

C. Except as provided in **Section 5.2.1.B** herein or other provisions of the Contract, if for any reason the Tolling Commencement Milestone cannot be achieved by the Guaranteed Date set forth in **Section 5.4.3**, and any written amendment thereto, the Vendor will be assessed liquidated damages for the delay and payment to the Vendor for System Acceptance shall be delayed.

D. Vendor agrees to pay to WSDOT liquidated damages for each day Vendor does not achieve Tolling Commencement by the Guaranteed Date set forth in **Section 5.4.3** and any Amendment thereto. The amount of liquidated damages that will be assessed shall be \$10,000.00 per day for each day after Friday, October 1, 2010 that the Tolling Commencement Milestone is not achieved.

E. For the purposes of this **Section 5.5.1** the term “day” shall mean 12:00 AM to 11:59 PM. Liquidated damages will be assessed on a daily basis commencing on Saturday, October 2, 2010 at 12:01 AM for each day that Vendor does not achieve Tolling Commencement. Vendor authorizes WSDOT to deduct these liquidated damages from payments due or coming due to Vendor under the Contract.

5.5.2 Additional Lane and Ramp Closures.

A. The closures of SR 520 mainline lanes and ramps will result in substantial traffic impacts. These closures will cause delays to the traveling public, increase fuel consumption, vehicle operating cost, pollution, and other inconvenient and harm far in excess of those resulting from delay of most projects.

B. Lane and ramps closures in excess of those allowed in Appendix 3, of the RFP and **Section 5.3** herein will result in losses and damage to WSDOT. As it would be impracticable to fix the actual damage sustained in the event of any such additional lane/ramp closure(s), WSDOT and Vendor agree that in the event of any such additional lane/ramp closures, the amount of damage which will be sustained will be the amount set forth in **Section**

5.5.2.C below, and the parties agree that Vendor shall pay such amounts as liquidated damages and not as a penalty.

C. Vendor agrees to pay to WSDOT liquidated damages for each lane/ramp closure in excess of those allowed in provided in Appendix 3 of the RFP and **Section 5.3** herein. The amount of liquidated damages that will be assessed are as follows:

(i) \$5000.00 liquidated damages per 15 minutes for each 15 minute period prorated to the nearest 5 minutes that all lanes of mainline SR 520 are not opened to traffic following a total roadway closure as specified in Appendix 3 of the RFP.

(ii) To pay \$2000.00 liquidated damages per 15 minutes for each 15 minute period prorated to the nearest 5 minutes that a lane is closed on mainline SR 520 beyond the scheduled opening time specified in Appendix 3 of the RFP.

(iii) To pay \$300.00 liquidated damages per 15 minutes for each 15 minute period prorated to the nearest 5 minutes that a ramp is closed beyond the scheduled opening time specified in Appendix 3 of the RFP.

5.6 Vendor Staff.

5.6.1 Vendor shall fully staff the Project and make available for Project Work the following **Key Project Staff**:

Role	Staff
Project Manager	
Deputy Project Manager	
Software Design Manager	
System Test Manager	
Maintenance Manager	
Quality Assurance Manager	

5.7.2 Vendor may substitute a Key Project Staff with the prior written approval of WSDOT, which will not unreasonably withheld or delayed. Vendor agrees to submit to WSDOT the professional qualifications of any proposed key project staff substitution prior to the staff's assignment to the Project. All substitutes must have equal or better qualifications than the staff being replaced.

5.7 WSDOT Staff.

WSDOT shall provide to Vendor timely and reasonable access to appropriate WSDOT personnel, contractors, and consultants as necessary for Vendor to perform the requirements of this Contract. The **WSDOT Project Manager** will be the principal contact for Vendor

concerning the supply and installation Work under this Contract. The WSDOT Project Manager information is set forth in **Section 12.3** herein.

5.8 Additional Terms and Conditions Specific to the Supply and Installation Segment of Work.

5.8.1 WSDOT shall furnish for the Project conduit, pads, cabinets, generator, and power in accordance with Appendix 2, Section 10 of the RFP.

5.8.2 Vendor acknowledges that WSDOT has contractors working on the SR 520 Corridor and Vendor agrees to coordinate and cooperate with WSDOT, WSDOT contractors, consultants, and other vendors, if any, in performing the Work under this Contract and attempt to see that the Work is properly performed on schedule.

5.8.3 WSDOT and Vendor shall timely comply with the Project Schedule set forth in Appendix 3 of the RFP, and by this reference made a part hereof.

VI. WARRANTY AND MAINTENANCE WORK SEGMENT

6.1 Term and Extensions.

The term of the warranty and maintenance Work segment shall be one year commencing upon the date of System Acceptance; Provided, that WSDOT shall have the right, at its sole option, to extend said term for nine (9) one-year periods. This term may be further extended upon the mutual written agreement of the parties.

6.2 Maintenance.

6.2.1 Time is of the essence for this Contract. Vendor shall maintain the TCS as set forth Appendix 5 of the RFP. Failure of Vendor to perform the required maintenance as set forth in this Section may result in the assessment of liquidated damages as set forth in **Section 6.9** herein.

6.2.2 WSDOT may, at its sole option, elect to assume, in whole or in part, the maintenance obligations provided by Vendor in this Contract. WSDOT shall provide Vendor a minimum of one hundred eighty (180) Calendar Days written notice prior to assuming such maintenance. The transition to **Shared Maintenance** shall be done in the manner set forth in Appendix 5 of the RFP.

6.2.3 Vendor shall perform an annual performance audit as required in Appendix 5 of the RFP.

6.3 Warranties.

6.3.1 Software Warranty. Vendor shall warrant the Software for the benefit of WSDOT for one year commencing upon the date of System Acceptance as detailed in Appendix 5 of the RFP.

6.3.2 Hardware Warranty. Vendor warrant the Hardware the for the benefit of WSDOT for one year commencing upon the date of System Acceptance as detailed in Appendix 5 of the RFP.

6.4 Lane Rental Fees.

If the Vendor determines that a lane or ramp closure is necessary to perform the warranty and maintenance Work required by this Contract, Vendor shall be required to pay a lane/ramp closure rental fee. The fee will be determined in accordance with the schedule located in Appendix 5 of the RFP.

6.5 Transition Training.

Vendor shall provide transition training for WSDOT as set forth in Appendix 5 of the RFP.

6.6 Software Upgrades and Enhancements.

For the term of this Contract, Vendor shall supply any Software Enhancements to WSDOT. Vendor agrees to provide such Enhancements pursuant to terms, warranties, and prices that are comparable to or better than the terms, warranties, and prices then being offered by Vendor to any other governmental entity purchasing the same quantity under similar conditions.

6.7 Compensation.

6.7.1 Compensation.

A. Vendor agrees to provide the warranty Work under this Contract at no additional cost to WSDOT.

B. WSDOT shall pay Vendor maintenance charges on a monthly basis in arrear in accordance with the Payment Schedule shown in **Section 6.7.2** below. Provided, that payment of maintenance services/support of less than one (1) month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each Calendar Day said services/charges are performed by Vendor.

C. WSDOT shall pay Vendor an annual performance audit fee in accordance with the Payment Schedule shown in **Section 6.7.8** below; Provided, said payment is subject to withholding as provided in **Exhibit A** to this Contract.

6.7.2 Payment Schedule -- Maintenance.

Monthly Pricing for Maintenance	
	<u>Monthly Price</u>
Year 1:	\$
Year 2:	\$
Year 3:	\$
Year 4:	\$
Year 5:	\$
Year 6:	\$
Year 7:	\$
Year 8:	\$
Year 9:	\$
Year 10:	\$

6.7.3 Modification to Payment Schedule. Any modification to the Payment Schedule shall be done by written Amendment to the Contract executed by both parties.

6.7.5 Invoice. Vendor shall submit an invoice to WSDOT each month as set forth in **Section 7** herein.

6.7.6 Vendor shall be responsible for all labor and expenses, including shipping, travel, and lodging, associating with providing the required warranty and maintenance services.

6.7.7 Should WSDOT elect to assume, in whole or in part, the maintenance services provided by Vendor under this Contract, the monthly pricing as provided above in **Section 6.7.2** shall be adjusted to a price that is comparable to or better than the prices Vendor is then offering any other governmental entity purchasing the same type and level of service under similar conditions.

6.7.8 Payment Schedule – Annual Performance Audit

Annual Pricing for Annual Performance Audit	
	<u>Annual Price</u>
Year 1 (covered by Operational Testing:	\$ 0

Year 2:	\$
Year 3:	\$
Year 4:	\$
Year 5:	\$
Year 6:	\$
Year 7:	\$
Year 8:	\$
Year 9:	\$
Year 10: (not necessary due to decommissioning)	\$

6.7.9 Modification to Payment Schedule. Any modification to the Payment Schedule shall be done by written Amendment to the Contract executed by both parties.

6.7.10 Invoice. Vendor shall submit an invoice to WSDOT annually as set forth in **Section 7** herein.

6.7.11 Vendor shall be responsible for all labor and expenses, including services equipment, travel, lodging, and related expenses associated with providing the required annual performance audit.

6.8 Warranty and Maintenance Management.

6.8.1 Vendor Maintenance Manager. Vendor shall appoint a **Vendor Maintenance Manager** for WSDOT's account under this Contract who will provide direct oversight of Vendor warranty and maintenance Services provided in this Contract. The Vendor Maintenance Manager will be the principal point of contact for WSDOT concerning warranty and maintenance Services under this Contract. Vendor shall notify the **WSDOT Contract Administrator** and the WSDOT Project Manager, in writing, when there is a new Vendor Maintenance Manager assigned to this Contract. Vendor shall submit to WSDOT for approval the professional qualifications of the new Vendor Maintenance Manager prior to assignment. Vendor will notify WSDOT in writing of the Vendor Maintenance Manager information prior to System Acceptance.

6.8.2 WSDOT Maintenance Management. The WSDOT Project Manager will be the principal contact for Vendor concerning warranty and maintenance Services under this Contract. The WSDOT Project Manager information is set forth in **Section 12.3** herein.

6.9 Liquidated Damages.

6.9.1. Revenues from the System are needed to offset the real incremental costs to WSDOT of providing operations personnel, support equipment, marketing, public outreach, and contracted services (such as, incident response and law enforcement) in support of the SR 520 TCS. The actual amount of revenues to be realized from the operation of the SR 520 TCS is unknown at this time; however, a traffic and revenue study has provided an estimate for the SR 520 Bridge. If the TCS is not maintained as required in this Contract, WSDOT will not realize its budgeted and reasonably projected level of new revenues.

6.9.2 Any delay by Vendor in providing the maintenance as required in this Contract will interfere with the proper implementation of the SR 520 TCS and will result in losses and damage to WSDOT. As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, WSDOT and Vendor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be determined according to the methods set forth in **Exhibit A** and summarized in **Section 6.9.3** below. The parties agree that Vendor shall pay such amounts as liquidated damages and not as a penalty.

6.9.3 Details addressing the functional requirements of the System are included in Appendix 4 of the RFP. Liquidated damages shall be calculated by the Vendor using the method set forth in **Exhibit A**. The performance categories detailed in Appendix A of the RFP are as follows:

- A. Transaction Creation (Lane Controller)
- B. Vehicle Detection (AVC)
- C. Vehicle Classification (AVC)
- D. Transponder Write (AVI)
- E. Transponder Reads (AVI)
- F. Image Capture
- G. Optical Character Recognition
- H. Data Storage
- I. Response and Repair Time
- J. Availability

ARTICLE VII. PRICING; INVOICE; PAYMENT

7.1 Price.

7.1.1 Vendor agrees to provide the Supply and Installation Work under this Contract for the Prices stated in **Section 5.4.3**.

7.1.2 Vendor agrees to provide the warranty and maintenance Work under this Contract for the Prices stated in **Section 6.7.2** herein.

7.1.3 No advance payment shall be made for the Products, System, or Services furnished by Vendor pursuant to this Contract.

7.1.4 For the term of this Contract, Vendor shall supply any System modification generally made available to customers as such System modifications become available. Vendor agrees to provide such System modifications pursuant to terms, warranties, and prices that are comparable to or better than the terms, warranties, and prices then being offered by Vendor to any other governmental entity purchasing the same quantity under similar conditions.

7.2 Taxes.

7.2.1 WSDOT will pay sales and use taxes, if any, imposed on the Services acquired under this Contract. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. WSDOT, as an agency of Washington State government, is exempt from property tax.

7.2.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

7.2.3 All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Vendor or Vendor's staff shall be Vendor's sole responsibility.

7.3 Invoices and Payment.

7.3.1 Payments made by WSDOT to Vendor are full compensation for all labor, Products, and Services. No additional compensation will be available, except by executed Amendment(s) to this Contract.

7.3.2 Payments of invoices shall be made in accordance with the Milestones and payment terms set forth in **Section 5.4** herein, and any Amendments hereto.

7.3.3 Vendor shall submit properly itemized invoices to WSDOT's Project Manager in hard copy duplicate and email an electronic copy of each invoice (.pdf). Invoices shall provide and itemize, as applicable, the following items:

- (a) WSDOT Contract number K_____ ;
- (b) Vendor name, address, phone number, and **Federal Tax Identification Number**;
- (c) Description of Products and/or Services, including quantity delivered;
- (d) Date(s) of delivery and/or date(s) of installation and set up;
- (e) Maintenance charges;
- (f) Net invoice Price for each item;
- (g) Applicable taxes;

- (h) Other applicable charges;
- (i) Total invoice Price; and
- (j) Payment terms.

7.3.4 WSDOT may withhold from Vendor's payment any amounts Vendor owes WSDOT under this Contract; Provided, that WSDOT has previously given Vendor notice of such owed amounts.

7.3.5 Incorrect or incomplete invoices will be returned by WSDOT to Vendor for correction and reissue.

7.3.6 The WSDOT Contract number K_____ must appear on all bills of lading, packages, and correspondence relating to this Contract.

7.3.7 Purchaser shall not honor drafts, nor accept goods on a sight draft basis.

7.3.8 If WSDOT fails to make timely payment, Vendor may invoice WSDOT one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1.00). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) Calendar Days of Acceptance of the Product or Service, or receipt of Vendor's properly prepared invoice, whichever is later.

7.3.9 In the event an overpayment is made to Vendor under this Contract, Vendor shall refund to WSDOT the full amount of any such erroneous payment or overpayment within thirty (30) Calendar Days of the date of the written notice of such erroneous payment or overpayment, as issued by WSDOT. If Vendor fails to refund the erroneous payment or overpayment within that thirty (30) day period, WSDOT may charge late payment fees as set forth in **Section 17.5** herein. The provisions in this Section shall survive the expiration or termination of this Contract.

ARTICLE VIII. CONTRACT BOND (PERFORMANCE AND PAYMENT BOND)

8.1 Vendor shall provide to WSDOT an executed Contract Bond in the amount of eighty percent (80%) of the total Price of each segment of Work within ten (10) Business Days after Notice to Proceed. The Contract Bonds, also covering state sales tax, shall:

8.1.1 be in substantially the same form as attached hereto as **Exhibit B**.

8.1.2 be signed by an approved surety (or sureties) that (1) is registered with the Washington State Insurance Commissioner, and (2) appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner;

8.1.3 be conditioned upon the faithful performance of the Contract by Vendor within the prescribed Milestones;

8.1.4 guarantee that the surety shall indemnify, defend, and protect WSDOT against any claim of direct or indirect loss resulting from the failure: (1) of Vendor or any of the employees or Subcontractors to faithfully perform the Work in accordance with the Contract, and (2) of Vendor or any Subcontractors to pay all laborers, mechanics, Subcontractors, material persons, or any other person who provides supplies or provisions for carrying out the Work.

8.2 WSDOT may require sureties or surety companies on the Contract Bond to appear and qualify themselves. Whenever WSDOT deems the surety or sureties to be inadequate, it may, upon written demand, require Vendor to furnish additional surety to cover any remaining Work. Until the added surety is furnished, Work will stop.

8.3 Upon the request of any person or entity appearing to be a potential beneficiary of Contract Bond covering payment of obligations arising under this Contract, Vendor shall promptly furnish a copy of the Contract Bond or shall permit a copy to be made.

ARTICLE IX. VENDOR'S RESPONSIBILITIES

9.1 Prompt Work.

Vendor warrants that it is available to perform the Work within the time specified in this Contract. Vendor will begin Work promptly and will perform the Work in a continuous and diligent manner, and Vendor shall not interrupt the Work except as may be provided under this Contract.

9.2 Qualified Workers.

Vendor shall be responsible to ensure that all of its employees and Subcontractor employees are properly trained, certified, or licensed as appropriate and are properly qualified by education and experience to perform the Work. Vendor shall avoid understaffing the Work or shuffling personnel assigned.

9.3 Delivery.

9.3.1 Vendor shall deliver the Products and Services ordered under the terms of this Contract in accordance with the schedule set forth in Appendix 3 of the RFP. For any exception to this Delivery Date, Vendor must notify WSDOT and obtain prior written approval. Time is of the essence with respect to delivery and Vendor may be subject to termination of this Contract, and/or other damages available under law or equity for failure to deliver on time.

9.3.2 All deliveries made pursuant to the Contract must be complete. Unless Vendor has obtained prior written approval from WSDOT, incomplete deliveries, backorders, or partial shipments will not be accepted. All shipments must be accompanied by a packing slip that identifies all items included with the shipment and the Contract. Vendor's delivery receipt must be signed by an authorized representative of WSDOT for all deliveries made hereunder.

9.4 Parts Availability.

Vendor shall guarantee parts availability or availability of parts with equal or greater functionality than is required in the RFP, as it may be modified by the Proposal, for a period of five (5) years after the discontinuance of the production model of the purchased Product.

9.5 Shipping and Risk of Loss.

Vendor shall ship all Products purchased pursuant to this Contract, freight prepaid, **FOB** at WSDOT's destination as indicated in the RFP, as may be modified by the Proposal. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Vendor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to Acceptance, except in circumstances where Vendor installs a Product on WSDOT property, in which case, WSDOT agrees to bear all risks of loss, damage, or destruction of the Products that occurs after WSDOT's acknowledgement of the installation of the Product on WSDOT property. Notwithstanding the above, Vendor shall not be liable for loss or damage attributable to WSDOT's fault or negligence, and WSDOT shall not be liable for loss or damage attributable to Vendor's fault or negligence.

9.6 Installations.

9.6.1 Vendor shall install the TCS in accordance with WSDOT's policies and requirements, and any conditions included in the RFP, as may be modified by the Proposal.

9.6.2 Vendor is hereby notified that fiber optic, communications, control systems, and other types of cable may be located within the Right of Way or WSDOT facilities.

9.6.3 Prior to any ground disturbance by Vendor, it shall be Vendor's responsibility to contact the appropriate agencies and utility companies to determine if underground utilities are present. Prior to the commencement of any Work that may impact underground utilities, Vendor shall take necessary steps for safety and non-disturbance.

9.6.4 Before beginning Work on or about the Right of Way, Vendor shall contact WSDOT's communications network control center to determine if WSDOT's cabling systems will be impacted and to make necessary arrangements. Prior to the commencement of any Work that may impact underground utilities not owned by WSDOT, Vendor agrees to notify affected owners under the requirements of chapter 19.22 RCW, Underground Utilities.

9.6.5 For all installations at the Traffic Management Center and Roadside Toll Collection System cabinets, the following provisions shall also apply:

(a) WSDOT shall prepare the environment to house the Product based upon the terms and any written requirements as agreed to in Appendix 2, Section 10 of the RFP. Vendor's specialists shall be available to provide required consultation related to environment preparation at no extra cost to WSDOT apart from the costs presented in the Contract documents.

(b) WSDOT hereby permits Vendor to interface with such cabling and systems in support of the delivery of the Products and Services ordered under this Contract.

9.7 Site Security.

While on WSDOT's property, including but not limited to the Right of Way and buildings, Vendor shall conform in all respects with physical, fire, or other security regulations. Vendor shall take reasonable precautions to ensure that the property is secure from unauthorized intruders, vandalism or any other unlawful activity.

9.8 Coordination and Cooperation.

9.8.1 Vendor shall cooperate with WSDOT, WSDOT contractors, and other vendors, if any, in an attempt to see that the Work is properly performed on schedule. Vendor shall collaborate with any other vendors and coordinate its Work with the work of such other vendor(s), if any, which could affect the Work, and Vendor shall proceed in such manner as not to interfere or delay the progress of the work as a whole.

9.8.2 If any part of Vendor's Work depends, for proper execution or results, upon the work of any other vendor(s), Vendor shall inspect and promptly report in writing to WSDOT any defects in the work of such other vendor that renders it unsuitable for such proper execution or results. Failure of Vendor to do so shall constitute its acceptance of the other vendor's work as fit and proper for the reception of Vendor's Work, except as to defects that may develop in the other vendor's work after the execution of Vendor's Work.

9.8.3 In cases of disagreement or disputes between Vendor and any other vendor that could delay or interfere with Vendor's Work due to the failure to collaborate and cooperate, or which cannot be resolved between Vendor and the others involved, Vendor shall give prompt written notice to WSDOT specifying in detail the disagreement or dispute.

9.8.4 Notwithstanding the existence of a dispute or disagreement between WSDOT and Vendor, Vendor shall diligently and without interruption proceed with the Work at such rates of progress to complete the Work on time, to the extent able under the circumstances and without incurring additional costs or expenses.

9.9 Licensing Standards.

Vendor shall comply with all applicable local, State, and Federal licensing, accreditation and registration requirements and standards necessary in the performance of this Contract including but not limited to the state licensing requirements and definitions set forth in chapter 19.02 RCW.

9.10 Compliance Requirements.

9.10.1 Vendor shall comply with all applicable **Laws and Regulations**, including but not limited to all Environmental Requirements, and all applicable nondiscrimination laws and regulations, including but not limited to: Title VI, Non-Discrimination, Title 49 C.F.R., Part 21 and Title VII of the Civil Rights Act; 42 U.S.C. § 12101 et seq., the Americans with

Disabilities Act; and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, Vendor may be declared ineligible for further contracts with WSDOT.

9.10.2 Vendor shall comply with all applicable **Mandatory Standards**.

9.10.3 Vendor shall comply with all applicable WSDOT tolling policies, procedures, and business rules.

9.10.4 The System shall be consistent with Washington State information technology policies, procedures, and practices as provided on the Department of Information Services website: (<http://isb.wa.gov/policies.aspx>), and any amendments thereto.

9.10.5 Notwithstanding the foregoing, Vendor will have no obligation to comply with any changes to the above that occur after the Effective Date, before a mutually agreed Amendment has been executed that reflects any additional Work and applicable charges that result from such changes.

9.11 Plan Certification.

A State registered professional engineer shall certify all plan sets and drawings for any field installation Work by stamping and signing the applicable plan sets.

9.12 Maintenance and Use of Data.

Vendor shall provide systems and procedures to maintain toll account and travel records as confidential and shall only use data obtained from the use of the System for WSDOT intended purposes. Vendor shall ensure that any of its Subcontractors or suppliers that may have or gain access to toll account and travel records are subject to the same confidentiality requirements. This provision shall survive the termination of this Contract.

9.13 Delivery Schedule.

Vendor shall provide a delivery schedule as set forth in Appendix 3 of the RFP.

9.14 Work Site Obligations.

Vendor shall be responsible for providing, at Vendor's expense: delivery of all Products, equipment, and materials to the Work site(s) and local storage and staging of equipment and materials. Vendor shall be responsible for maintenance and clean-up of any Work site.

9.15 Public Work.

This is a Public Work pursuant to Chapter 39.04 RCW and/or Chapter 47.28 RCW and, as such, Vendor shall comply with all applicable Laws and Regulations.

9.16 Federal Requirements.

This Project is funded in part with FHWA Funds and, as such, Vendor shall comply with all applicable Federal Laws and Regulations as set forth in Appendix 18 of the RFP.

ARTICLE X. SUBCONTRACTING

10.1 Vendor may, with prior written permission from the WSDOT Contract Administrator, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to WSDOT for any breach in the performance of Vendor's duties or obligations. For purposes of this Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor; Provided, that Subcontractors shall not have the right to amend this Contract or make any other binding commitment on Vendor. Vendor shall be liable for any loss or damage to WSDOT, including but not limited to personal injury, physical loss, harassment of WSDOT employees, or violations of applicable Sections of this Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees.

10.2 Vendor is solely responsible and liable for ensuring that the terms and conditions set forth in this Contract are incorporated into any partnering or subcontracting relationships with other entities for Work related to this Contract. Liability includes management responsibility and quality assurance for Work performed and financial responsibility for payments to and by partner organizations or Subcontractor to others.

10.3 For Work to be performed for WSDOT, WSDOT reserves the right to reject any of Vendor's employees, suppliers, or Subcontractors with due cause. Any and all costs or expenses associated with replacement of any person or entity shall be borne by Vendor.

10.4 In the event any of Vendor's employees are identified as key personnel in this Contract, Vendor shall take all necessary steps to assure that said Vendor's employees are available and assigned to the Work as long as said employees are employed by Vendor.

ARTICLE XI. TREATMENT OF ASSETS

11.1 Title to all property furnished by WSDOT under this Contract shall remain with WSDOT. Upon Acceptance and final payment, title to all **Deliverables** as required in the RFP, including but not limited to the System, Product, system design documents, **Intellectual Property** rights in the forgoing, and data collected by the System shall pass to, vest in, and belong to WSDOT. Upon such payment and Acceptance, Vendor shall convey to WSDOT good title to such System, Product, and **Software System Documentation**, and Intellectual Property free and clear of all liens, pledges, mortgages, encumbrances, or other security interests. As used in this Section, if the System, Product, or Software System Documentation is Vendor's or a third party's Intellectual Property, only the applicable license, not title, is passed to and vested in WSDOT.

11.2 Any WSDOT property furnished to Vendor shall, unless otherwise provided herein or approved in writing by WSDOT, be used only for the performance of this Contract.

11.3 Vendor shall be responsible for any loss of or damage to property of WSDOT that results from Vendor's acts or activities, or that results from Vendor's failure to maintain and administer that property in accordance with sound management and security practices.

11.4 Upon loss or destruction of, or damage to any WSDOT property, Vendor shall notify WSDOT and shall take all reasonable steps to protect that property from further damage.

11.5 Vendor shall surrender to WSDOT all WSDOT property prior to settlement upon completion, termination, or cancellation of this Contract.

11.6 The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XII. CONTRACT MANAGEMENT AND ADMINISTRATION

12.1 Notices.

12.1.1 Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses as follows:

To Vendor at:

Attn:

Phone:

Fax:

E-mail:

To WSDOT at:

State of Washington
Department of Transportation
Attn: Tami Grant
719 Sleater Kinney Rd. SE, Suite 200
Lacey, WA 98503
P.O. Box 47408
Olympia, Washington 98504-47408
Phone: 360-705-7549
Fax: (360) 705-6848
E-mail: grantt@wsdot.wa.gov

12.1.2 The notice address and/or addressee as provided herein may be changed by written notice given as provided above.

12.1.3 Vendor agrees to accept service of process at the address provided herein.

12.1.4 For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

12.1.5 Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

12.1.6 In the event that a subpoena or other legal process commenced by a third party in any way concerning the Products or Services provided pursuant to this Contract is served upon Vendor or WSDOT, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor and WSDOT further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party; Provided that, such cooperation does not require WSDOT to expend funds.

12.1.7 The provisions in this Article shall survive the expiration or termination of this Contract.

12.2 Vendor Project Manager.

Vendor shall appoint a **Vendor Project Manager** for WSDOT's account under this Contract who will provide direct oversight of Vendor activities conducted hereunder. Vendor Project Manager will be the principal point of contact for WSDOT concerning Vendor's performance under this Contract. Vendor shall notify the WSDOT Contract Administrator and the WSDOT Project Manager, in writing, when there is a new Vendor Project Manager assigned to this Contract. Vendor shall submit to WSDOT for approval the professional qualifications of the new Vendor Project Manager prior to assignment. Vendor Project Manager information is:

Project Manager:

Phone:

Cell:

Email:

12.3 WSDOT Project Manager.

WSDOT shall appoint a WSDOT Project Manager for this Contract and will provide oversight of the activities conducted hereunder. The WSDOT Project Manager will be the principal contact for Vendor concerning business activities under this Contract. WSDOT shall notify Vendor, in writing, when there is a new WSDOT Project Manager assigned to this Contract. The WSDOT Project Manager information is:

Jennifer Charlebois
Urban Corridors Office
Goldsmith Building
401 2nd Avenue South, Suite 400
Seattle, WA 98104

206.716.1106 (office)
206.491.6006 (cell)
206.716.1101 (fax)

12.4 WSDOT Contract Administrator.

WSDOT shall appoint a WSDOT Contract Administrator for this Contract who is designated as the WSDOT employee to receive legal notices, and to administer, amend, or terminate this Contract. WSDOT shall notify Vendor, in writing, when there is a new WSDOT Contract Administrator assigned to this Contract. The WSDOT Contract Administrator information is:

Tami Grant
Contract Manager
719 Sleater Kinney Rd. SE, Suite 200
Lacey, WA 98503
P.O. Box 47408
Olympia, Washington 98504-7408
Phone : (360) 705-7549
Fax : (360) 705-6848
E-mail : grantt@wsdot.wa.gov

ARTICLE XIII. INTELLECTUAL PROPERTY

13.1 Vendor Intellectual Property.

With respect to **Vendor Intellectual Property**, Vendor grants to WSDOT a non-exclusive, perpetual license to use Vendor Intellectual Property as provided in the **License** attached to this Contract as **Exhibit C**.

13.2 Third Party Software.

For any third party Software provided by Vendor under this Contract, Vendor shall provide WSDOT with all rights necessary to enable WSDOT to legally use said third party Software for the purposes and duration of this Contract.

13.3 Vendor's Software Warranty and Representations.

13.3.1 Vendor hereby warrants and represents to WSDOT that Vendor is the owner of the Software licensed hereunder or otherwise has the right to grant to WSDOT the licensed right to the Software provided by Vendor through this Contract without violating any rights of any third party worldwide.

13.3.2 Vendor represents and warrants that Vendor has the right to license the Software to WSDOT as provided in this Contract and that WSDOT's use of the Software and

documentation within the terms of this Contract will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, contract, or confidentiality rights worldwide.

13.3.3 Vendor represents and warrants that: Vendor is not aware of any claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the Software infringes any patents, copyrights, or trade secrets of any third party; and that Vendor has no actual knowledge that the Software infringes upon any patents, copyrights, or trade secrets of any third party.

13.4 Software Code Escrow.

13.4.1 Establishment of Escrow. WSDOT and Vendor acknowledge that certain technical data, including source code and Software System Documentation, constituting information which, if subject to public disclosure, would deprive Vendor of commercial value, but to which WSDOT must be ensured access in the events described in **Section 13.4.4** below. Accordingly, within ten (10) Business Days of the Effective Date an escrow shall be established for such technical data. All Escrow Material shall be provided to the software escrow repository, _____ (**Escrow Agent**), under an escrow agreement in substantially the same form as **Exhibit D (Escrow Agreement)**, attached hereto and by this reference made a part hereof.

13.4.2 Deposit into Escrow. Concurrent with the opening of the escrow, Vendor shall deposit the _____ source code with the Escrow Agent. Vendor thereafter shall deposit with the Escrow Agent all modifications and enhancements of or to the Escrowed Material promptly following the delivery to WSDOT of such modifications and enhancements; provided that Vendor shall not be required to make more than one deposit per calendar quarter. Vendor shall bear the costs of preparing and depositing the Escrowed Material.

13.4.3 Title. Title to all Intellectual Property in the Software shall remain with Vendor, subject to the rights and licenses granted to WSDOT by and in accordance with this Contract and the Escrow Agreement.

13.4.4 Use of Released Escrowed Material. At the time the Escrow Agent turns over to WSDOT the Escrowed Material, WSDOT shall have the right and license to use the Escrowed Material solely in order to effectively use or provide use of the software as permitted in the License and/or in this Contract, as applicable.

13.4.5 Costs of Escrow. Vendor shall pay any and all fees incurred with the Escrow Agent with respect to the Escrow Agreement, except as otherwise set forth therein.

13.4.6 Termination of Escrow. The Escrow Agreement shall not terminate during the term of this Contract except by mutual written agreement by WSDOT and Vendor and only upon securing a new escrow agreement upon the same or better terms as the Escrow Agreement.

13.5 Intellectual Property Indemnification.

13.5.1 Vendor, at its expense, shall defend, indemnify, and save WSDOT harmless from and against any claims against WSDOT that any Product supplied hereunder, or WSDOT's use of the Products within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by WSDOT provided that WSDOT:

A. Promptly notifies Vendor in writing of the claim, but WSDOT's failure to provide timely notice shall only relieve Vendor from its indemnification obligations if and to the extent such late notice prejudiced the defense; and

B. Cooperates with Vendor in connection with the defense of the claim and all related settlement negotiations; Provided, that such assistance shall not require WSDOT to expend funds.

13.5.2 If such claim has occurred, or in Vendor's opinion is likely to occur, WSDOT agrees to permit Vendor, at its option and expense, either to procure for WSDOT the right to continue using the Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If a court enjoins use of the Product and Vendor determines that none of these alternatives is reasonably available, Vendor, at its risk and expense, will take back the Product and provide WSDOT a refund. In the case of Product, Vendor shall refund to WSDOT the one hundred fifty percent (150%) of the amount WSDOT paid to Vendor for the Product. No termination charges will be payable on such returned Product. In the event the Product has been installed less than one (1) year, Vendor shall refund all costs paid by WSDOT to Vendor associated with the initial installation.

13.5.3 Vendor has no liability for any claim of infringement arising solely from:

A. Modification of the Product by WSDOT or a third party without the prior knowledge and approval of Vendor; or

B. Use of the Product in a way not specified by Vendor.

13.5.4 Vendor retains liability for any claim of infringement that arises against Vendor's Product independently of any of the actions specified in **Section 13.5.3**.

13.6 Rights to Data.

WSDOT owns and retains all rights to the data generated by the System. It is not intended and nothing herein shall be construed as granting Vendor any rights to or use of such data.

13.7 Survival.

The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XIV. REPRESENTATIONS AND WARRANTIES

14.1 Vendor Commitments, Warranties and Representations.

Any written commitment by Vendor within the scope of this Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment shall constitute a breach of this Contract and/or Proposal and shall render Vendor liable for damages under the terms of this Contract. For purposes of this Section, a commitment by Vendor includes: (a) Prices, discounts, and options committed to remain in force over a specified period of time; and (b) any warranty or representation made by Vendor in this Contract, Proposal, or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in this Contract, or used to effect the sale to WSDOT.

14.2 Covenant Against Contingent Fees.

Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or a bona fide established commercial or selling agency of Vendor. In the event Vendor breaches this Section, WSDOT shall have the right to either immediately terminate or annul this Contract without liability to WSDOT, or, in WSDOT's discretion, deduct from payments due to Vendor, or otherwise recover from Vendor, the full amount of such commission, percentage, brokerage, or contingent fee.

14.3 OSHA/WISHA.

Vendor represents and warrants that its Products, when shipped, are designed and manufactured to meet the current Federal and State safety and health regulations. Vendor agrees to indemnify and hold WSDOT harmless from all damages assessed against WSDOT as a result of the failure of the Products furnished under this Contract to so comply.

14.4 The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XV. INDEMNITY; INSURANCE

15.1 Indemnification.

15.1.1 To the extent allowed by law, each party, its successors and assigns (**Indemnitor**), will protect, save, hold harmless, and defend the other party, its authorized agents, and employees (**Indemnitee**), from all claims, actions, costs, damages, or expenses of any nature whatsoever by reason of the acts or omissions of the Indemnitor, its agents, contractors, Subcontractors, or employees, arising out of, or in connection with, its acts or activities or the acts or activities of the Indemnitor and its agents, contractors, Subcontractors, or employees, including but not limited to any costs or attorneys' fees. The obligations in this paragraph shall

not include such claims, costs, damages, or expenses to the extent caused by the acts of the Indemnitee or its authorized agents, contractors, Subcontractors, or employees; PROVIDED, that if the claims or damages are caused by or result from the concurrent acts of: (a) the Indemnitor, its agents, contractors, Subcontractor, or employees, and (b) the Indemnitee, its agents, contractors, Subcontractors, or employees, or involves those actions covered by Ch. 4.24.115 RCW, this indemnity provision shall be valid and enforceable only to the extent of the acts of Indemnitor's agents, contractors, Subcontractors, and employees.

15.1.2 Vendor specifically assumes potential liability for actions brought by Vendor's own employees against WSDOT and, solely for the purpose of this indemnification and defense, Vendor specifically waives any immunity under the State industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the parties.

15.1.3 WSDOT specifically assumes potential liability for actions brought by WSDOT's own employees against Vendor and, solely for the purpose of this indemnification and defense, WSDOT specifically waives any immunity under the State industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the parties.

15.1.4 The indemnification provisions in this Section shall survive the expiration or termination of this Contract.

15.2 Insurance.

15.2.1 Vendor shall, during the term of this Contract, and at its expense acquire and maintain in full force and effect, the insurance described in this Section. Vendor shall acquire and maintain in effect such insurance from an insurance carrier or carriers licensed to conduct business in the State having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. In the event of cancellation, non-renewal, revocation, or other termination of any insurance coverage required by this Contract, Vendor shall provide written notice of such to WSDOT within one (1) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at WSDOT's sole option, result in this Contract's termination.

15.2.2 The minimum acceptable limits shall be as indicated below, with no deductible unless otherwise specified or approved by WSDOT in advance, for each of the following categories:

A. Commercial General Liability (CG 00 01 12 04, ISO or substitute liability form providing equivalent coverage) covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

B. Business Automobile Liability (CA 00 01 10 01, ISO or substitute liability form proving equivalent coverage) covering owned, hired, or non-owned vehicles, the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;

C. Employers Liability (Stop Gap) insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million

per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;

D. Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, conditioned upon **Section 15.2.7** below, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate;

E. Crime Coverage with a deductible not to exceed \$100,000, conditioned upon **Section 15.2.7** below, and coverage of not less than \$1 million single limit per occurrence and \$2 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty; and

F. Umbrella policy providing excess limits over the above referenced general liability and automobile liability primary policies in an amount not less than \$3 million per policy.

15.2.3 Such insurance policies or related certificates of insurance shall name WSDOT as an additional named insured on all general liability, automobile liability, employers' liability, and umbrella policies. Such policies or related certificates of insurance shall also reference this WSDOT Contract number K_____ and shall have a condition that they not be revoked by the insurer until forty-five (45) Calendar Days after written notice of intended revocation thereof shall have been given to WSDOT by Vendor's insurance broker. Under no circumstances will WSDOT be liable for any policy premiums or deductibles.

15.2.4 All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State on behalf of WSDOT and shall include a severability of interests (cross-liability) provision.

15.2.5 Vendor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.

15.2.6 Prior to performing Work under this Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. WSDOT will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

15.2.7 For Professional Liability Errors and Omissions coverage and Crime Coverage, Vendor shall: (a) continue such coverage for six (6) years beyond the expiration or termination of this Contract, naming WSDOT as an additional insured and providing WSDOT with certificates of insurance on an annual basis; (b) within thirty (30) Calendar Days of execution of this Contract provide for WSDOT's benefit an irrevocable stand-by letter of credit, or other financial assurance acceptable to WSDOT, in the amount of \$100,000, during the initial and any subsequent terms of this Contract and for six (6) years beyond the expiration or

termination of this Contract to pay for any premiums to continue such claims-made policies, or available tails, whichever is appropriate, at WSDOT's sole option, in the event Vendor fails to do so. In addition, such irrevocable stand-by letter of credit shall provide for payment of any deductible on the Professional Liability Errors and Omissions policy and the Crime Coverage under the same terms and conditions of such policy as though there were no deductible. "Irrevocable stand-by letter of credit" as used in this Contract means a written commitment by a Federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by WSDOT (the beneficiary) of a written demand therefore.

15.2.8 Vendor shall furnish to WSDOT copies of certificates of all required insurance within thirty (30) Calendar Days of the Effective Date and copies of renewal certificates of all required insurance within thirty (30) Calendar Days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Article. The insurance certificate shall require notification to WSDOT prior to termination for any reason.

15.2.9 By requiring insurance herein, WSDOT does not represent that coverage and limits will be adequate to protect Vendor, nor limit WSDOT's right to seek additional recovery from Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to WSDOT in this Contract.

ARTICLE XVI. TERMINATION

16.1 Termination for Default.

16.1.1 The violation of any term or condition of this Contract, or the failure to fulfill in a timely and proper manner any requirement in this Contract by either party shall constitute a default of this Contract.

16.1.2 Except as otherwise provided herein, in the event of a default by either party, the aggrieved party may terminate this Contract without penalty or further liability, except as expressly provided herein, upon not less than thirty (30) Calendar Days prior written notice to the defaulting party; Provided, that the defaulting party has failed to cure such default within that thirty (30) day period, or such longer period, as may be reasonably determined by the aggrieved party, if the defaulting party is diligently working to cure the default. If the parties cannot agree on the appropriate cure or cure period, then the parties shall follow the disputes and remedies process in **Article XVII** of this Contract. If there is no dispute as to the appropriate cure or cure period and the default is not cured within the cure period, the aggrieved party may immediately terminate this Contract by giving written notice to the defaulting party. The option to terminate shall be at the sole discretion of the aggrieved party.

16.1.3 In the event of a Vendor default involving repair, replacement, maintenance, or training, or technical support services, WSDOT may terminate this Contract without penalty or further liability except as expressly provided herein, upon not less than the length of time specified in the notice of default; Provided, that Vendor has failed to cure such

default within the period specified in the notice of default, or such longer period, as may be reasonably determined by WSDOT, if Vendor is diligently working to cure the default. If the default is not cured within the cure period, WSDOT may immediately terminate this Contract by giving written notice to Vendor. The option to terminate shall be at the sole discretion of WSDOT.

16.1.4 In the event of a Vendor default, WSDOT reserves the right to suspend all or part of this Contract, withhold further payments, or prohibit Vendor from incurring additional obligations of funds: (a) during the investigation of the alleged Vendor default; (b) pending corrective action by Vendor of a default; or (c) pending a decision by WSDOT to terminate this Contract.

16.1.5 In the event of termination of this Contract by WSDOT for a Vendor default, WSDOT shall have the right to procure the Products and Services on the open market and Vendor shall be liable for all costs, expenses, and damages incurred by WSDOT for such default and termination, including but not limited to: (i) the cost difference between the original Contract Price for the Products and Services and the replacement costs of such Products and Services acquired from another vendor; (ii) all administrative costs directly related to the replacement of this Contract, including but not limited to costs of competitive bidding, mailing, advertising, applicable fees, charges, or penalties, and WSDOT staff and consultant time costs; and (iii) any other costs to WSDOT resulting from Vendor's default and the termination of this Contract for such default. WSDOT shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe WSDOT for Vendor's default.

16.1.6 In the event of termination of this Contract by Vendor for a WSDOT default, WSDOT shall be liable only for payments required by the terms of this Contract for Products received and accepted and for Services received by WSDOT prior to the effective date of termination.

16.1.7 Waiver or acceptance of any default of the terms of this Contract by WSDOT shall not operate as a release of Vendor's responsibility for any prior or subsequent default.

16.1.8 If Vendor defaults on any provision in this Contract three (3) times within a six (6) month period, the third default shall be deemed "non-curable" and this Contract may be terminated by WSDOT on not less than thirty (30) Calendar Days written notice.

16.2 Termination by WSDOT.

16.2.1 WSDOT may terminate this Contract, without penalty or further liability as follows:

A. In the event that WSDOT's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WSDOT may terminate this Contract, in whole or in part, by seven (7) Calendar Day's written notice to Vendor. This Section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Products or Services from a third party;

B. In the event funding to WSDOT from State, Federal, or other sources is withdrawn, reduced or limited in any way after the Effective Date and prior to normal completion, WSDOT may terminate this Contract by seven (7) Calendar Days written notice to Vendor;

C. If funds are not allocated to WSDOT to continue this Contract in any future period, WSDOT may at its option terminate this Contract by seven (7) Calendar Days written notice to Vendor or work with Vendor to arrive at a mutually acceptable resolution of the situation. WSDOT agrees to notify Vendor in writing of such non-allocation at the earliest possible time. This Section shall not be construed to permit WSDOT to terminate this Contract in order to acquire similar Products or Services from a third party;

D. WSDOT may terminate this Contract by written notice to Vendor if WSDOT determines, after due notice and examination, that Vendor has violated Chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, WSDOT shall be entitled to pursue the same remedies against Vendor as it could pursue under the Termination for Default Section;

E. Immediately, upon written notice, if a receiver is appointed to take possession of Vendor's assets, Vendor makes a general assignment for the benefit of creditors, or Vendor becomes insolvent or takes or suffers action under the Bankruptcy Act; and

F. Upon not less than thirty (30) Calendar Days prior written notice, unless an emergency exists, as determined by WSDOT, then immediately, if WSDOT determines that it is in the best interest of WSDOT to terminate this Contract.

16.2.2 If this Contract is terminated pursuant to this **Section 16.2**, WSDOT is liable only for payments required by the terms of this Contract for Products received and for which Acceptance has been given, and for Services received by WSDOT prior to the effective date of termination.

16.3 Termination Procedure.

16.3.1 In addition to the procedures set forth below, if WSDOT terminates this Contract, Vendor shall follow any procedures WSDOT specifies in WSDOT's Notice of Termination.

16.3.2 Upon termination of this Contract, WSDOT, in addition to any other rights provided in this Contract, may require Vendor to deliver to WSDOT any property or Products specifically produced or acquired for the performance of such part of this Contract as has been terminated.

16.3.3 Unless otherwise provided herein, WSDOT shall pay to Vendor the agreed-upon Price, if separately stated, for the Products or Services received and for which Acceptance has been given by WSDOT; Provided that, in no event shall WSDOT pay to Vendor an amount greater than Vendor would have been entitled to if this Contract had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of **Article XVII. Disputes and Remedies Section** of this Contract. WSDOT may withhold from

any amounts due Vendor such sum as WSDOT determines to be necessary to protect WSDOT from potential loss or liability.

16.3.4 Vendor shall pay amounts due WSDOT as the result of termination within thirty (30) Calendar Days of notice of amounts due. If Vendor fails to pay such amounts within that thirty (30) day period, WSDOT may charge late payment fees as set forth in **Section 17.5** herein.

ARTICLE XVII. DISPUTES AND REMEDIES

17.1 Dispute Resolution.

17.1.1 The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this Contract.

FOR WSDOT:

Tami Grant
Contract Manager
State of Washington
Department of Transportation
719 Sleater Kinney Rd. SE, Suite 200
Lacey, WA 98503
P.O. Box 47408
Olympia, Washington 98504-7408

and

Patty Rubstello
State of Washington
Department of Transportation
Urban Corridors Office
Goldsmith Building
401 2nd Avenue South, Suite 400
Seattle, WA 98104
206.464.1299 (office)
206.276.4580 (cell)
206.716.1101 (fax)

FOR VENDOR:

Phone:
Fax:
E-mail:

17.1.2 The WSDOT Designated Representative and Vendor Designated Representative shall confer to resolve disputes that arise under this Contract as requested by either party. The Designated Representatives shall use their best efforts and exercise good faith to resolve such disputes.

17.1.3 In the event the Designated Representatives are unable to resolve the dispute, the WSDOT Tolling Division Director, or his designee, and Managing Director for Vendor or her/his designee shall confer and exercise good faith to resolve the dispute.

17.1.4 In the event the WSDOT Tolling Division Director for WSDOT, and the Managing Director for Vendor are unable to resolve the dispute, the parties may, if mutually agreed in writing, submit the matter to non-binding mediation. The parties shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the timeframe the parties are willing to discuss the disputed issue(s).

17.1.5 Each party shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each party shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conference from later discovery or use in evidence; Provided, that any settlement executed by the parties shall not be considered confidential and may be disclosed. Each party shall pay its own costs for mediation and share equally in the cost of the mediator. The venue for the mediation shall be in Olympia, Washington, unless the parties mutually agree in writing to a different location.

17.1.6 If the parties cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either party may institute a legal action in the County of Thurston, State of Washington, unless other venue is mutually agreed to in writing. The parties agree that they shall have no right to seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

17.2 Continuity of Service.

17.2.1 WSDOT and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

17.2.2 If the subject of the dispute is the amount due and payable by WSDOT for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute.

17.3 Performance by WSDOT.

If Vendor defaults in the performance or observation of any covenant or agreement contained in this Contract, WSDOT, without notice if deemed by WSDOT that an emergency

exists, or if no emergency exists, with thirty (30) Calendar Days prior written notice, may direct Vendor to stop Work and may itself perform or cause to be performed such covenant or agreement. Such emergency shall include, but not be limited to, endangerment of life or the highway facility. Vendor shall reimburse WSDOT the entire cost and expense of such performance by Vendor within thirty (30) Calendar Days of the date of WSDOT's invoice. Any act or thing done by WSDOT under the provisions of this Section shall not be construed as a waiver of any agreement or condition herein contained or the performance thereof. The provisions in this Section shall survive the expiration or termination of this Contract.

17.4 Non-Exclusive Remedies.

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law; Provided, that Vendor shall have no right to seek non-monetary relief in court with the exception of seeking injunctive relief to enjoin WSDOT from violating the terms of any license to Intellectual Property granted to WSDOT under this Contract. The provisions in this Section shall survive the expiration or termination of this Contract.

17.5 Late Payment Fees.

If Vendor fails to make timely payment of any amounts due WSDOT under this Contract, at WSDOT's option, the delinquent sum shall bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by State law, whichever is greater; Provided that if the highest rate allowable by State law is less than twelve percent (12%), interest charged hereunder shall not exceed that amount. Interest on all delinquent amounts shall be calculated from the original due date to the date of payment. Also there shall be a charge for any check returned uncollectable in accordance with WAC 468-20-900. WSDOT and Vendor agree that such charges represent a fair and reasonable estimate of the costs incurred by WSDOT by reason of late payments and uncollectable checks. Further, WSDOT's acceptance of late payment charges and/or any portion of the overdue payment shall in no event constitute an accord and satisfaction, compromise of such payment, or a waiver of Vendor's default with respect to such overdue payment, nor prevent WSDOT from exercising any other rights and remedies granted in this Contract. When a delinquency exists, any payments received will be applied first to the late payment charge and late payment fees, and next to the delinquent payment. The provisions in this Section shall survive the expiration or termination of this Contract.

17.6 Limitation of Liability.

17.6.1 The parties agree that neither Vendor nor WSDOT shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages, except a claim related to bodily injury or death, or a claim or demand based on a patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This Section does not modify any other conditions as are elsewhere agreed to herein between the parties. The damages specified in this Contract shall not be construed to be consequential, incidental, indirect, or special damages as that term is used in this Section.

17.6.2 Neither Vendor nor WSDOT shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the responsible party, or its agent, employee, contractor, or Subcontractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than WSDOT acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

17.6.3 Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's or its agent, employee, contractor, or subcontractor's respective fault or negligence.

17.6.4 WSDOT shall not be liable in any manner for, or on account of, any loss or damage sustained to any property of whatsoever kind stored, kept, or maintained on or about the Right of Way or WSDOT occupied buildings, except for such claims or losses that may be caused by WSDOT or its authorized agents or employees pursuant to the terms of this Contract. Upon termination of this Contract, WSDOT or its agent may remove all personal property of Vendor remaining on said WSDOT property at Vendor's expense and dispose of it in any manner WSDOT deems appropriate. Vendor agrees to reimburse WSDOT for the costs of such removal and disposal within thirty (30) Calendar Days of the date of the WSDOT's invoice.

17.6.5 The provisions in this Section shall survive the expiration or termination of this Contract.

ARTICLE XVIII. AUDITS AND RECORDS

18.1 Auditing Requirements.

18.1.1 State/Federal Audits (*WSDOT Internal Auditor; External Audit Agencies*)

The Vendor shall provide services to support WSDOT's internal audit staff and external auditors, to meet all audit requirements. The Vendor shall provide all financial, transaction, and inventory records and reports to support auditing. The Vendor shall grant full access to its records, staff, data, systems, and other information for its tolling services, to WSDOT's Internal Audit staff and external auditors.

18.1.2 Outside Audits (*SAS 70/ 88 Audits; Attest Engagements; Other Vendor Audits*)

A. The Vendor shall obtain an annual audit for services related to this Contract, in accordance with Statement on Auditing Standards (**SAS**) 70 and 88 which must include: "An Audit of Controls Placed in Operation and Tests of their Operating Effectiveness" (A Type II SAS 70/88 Audit). WSDOT has the authority to select control objectives for the annual SAS 70/88 audit. WSDOT will have access to review and copy the audit firm's working papers and other official documents supporting the SAS 70/88 audit report.

B. The Vendor shall also obtain annual attest engagements examining Vendor assertions on compliance with the Performance Measures set forth in **Exhibit A** to this Contract. These engagements will be conducted in accordance with the AICPA Audit Standards. Any specific attest procedures for the auditor requested by the Vendor shall be subject to approval by WSDOT.

18.2 Review of Vendor's Records.

18.2.1 Vendor shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to , and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. Vendor shall retain all such records for six (6) years after final payment. If any audit, litigation, or claim is started before the expiration of the six (6) year period, the records shall be retained until all audits, litigation, or claims involving the records have been resolved. The six (6) year retention period begins when the Vendor received final payment. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of final payment on this Contract.

18.2.2 All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the WSDOT Contract Administrator, WSDOT Director of Internal Audit, the Office of the State Auditor, as well as, federal officials so authorized by law, rule, regulation or contract, at no additional cost to the WSDOT. During the term of this Contract, Vendor shall provide access to original records for examination, inspection, copying, or audit, at a location in Thurston, Pierce, or King County, Washington. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor.

18.2.3 Vendor shall incorporate in its subcontracts this Section's records retention and review requirements.

18.2.4 It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from WSDOT's review unless the Price, cost, or any other material issue under this Contract is calculated or derived from these factors.

18.3 Public Records.

18.3.1 Any documents and records that are prepared by Vendor, its agents, contractors, or consultants and delivered to WSDOT may be determined to be public records under the Washington Public Records Act, Chapter 42.56 RCW, and as such may be subject to public disclosure. WSDOT recognizes that certain documents and records may contain proprietary information exempt from disclosure under Public Records Act, may constitute trade

secrets as defined in RCW 19.108.010(4) and may include confidential information which is otherwise subject to protection from misappropriation or disclosure. Should such records become the subject of a request for public disclosure, the following provisions shall apply.

18.3.2 WSDOT shall immediately notify Vendor of such request and the date by which it anticipates producing the requested records.

18.3.3 Vendor must then assert in writing to WSDOT any claim that such records contain proprietary or confidential information that it believes is exempt from disclosure under the Public Records Act or is subject to protection pursuant to Chapter 19.108 RCW or other State law so that WSDOT may consider such assertion in responding to the requestor.

18.3.4 If Vendor fails to make such assertion within eight (8) Calendar Days after the date WSDOT notifies Vendor of its intended response, WSDOT shall have the right to make such disclosure.

18.3.5 If Vendor makes a timely assertion that the requested records contain proprietary or confidential information or trade secrets, WSDOT will allow Vendor an additional ten (10) days for Vendor to seek judicial protection of the records pursuant to RCW 42.56.540. Such an action shall be at Vendor's expense. Should WSDOT elect to participate in any such action its own attorney's fees will be WSDOT's expense. If Vendor does not seek judicial protection of the records within ten (10) Calendar Days after notifying WSDOT of its belief that the records contain proprietary or confidential information or trade secrets, then WSDOT shall release the records to the requestor.

18.3.6 If prior to judicial consideration of a challenge by a requester, WSDOT in its sole discretion believes Vendor does not have a valid claim, it shall so notify Vendor no less than five (5) Calendar Days prior to the date WSDOT intends to make the disclosure to allow Vendor to take such action as it deems appropriate prior to disclosure. WSDOT will not make such a disclosure while an action to enjoin disclosure is pending under RCW 42.56.540.

18.3.7 If WSDOT denies a request for public records solely for reasons other than Vendor's assertion of proprietary or confidential information contained in records, Vendor has no responsibility for payment of any attorneys' fees or fines that may be imposed on WSDOT, nor for payment of WSDOT's attorneys' fees.

18.3.8 In the event Vendor believes that any documents or records subject to transmittal to or review by WSDOT under the terms of this Agreement contains proprietary, trade secret or other materials that are exempt or protected from disclosure pursuant to applicable Laws and Regulations, Vendor shall identify and clearly mark such information prior to such transmittal or review. The provisions of this **Article XVIII** shall apply even though Vendor may fail to identify and clearly mark such information prior to transmittal or review.

18.4 The provisions in this Article shall survive the expiration or termination of this Contract.

ARTICLE XIX. GENERAL

19.1 Recitals.

The Recitals set forth in **Article I** herein are hereby incorporated into this Contract.

19.2 Exhibits and Attachments.

All exhibits, attachments, and documents referenced in this Contract are hereby incorporated into this Contract.

19.3 RFP and Proposal.

The RFP and Proposal and all exhibits, attachments, appendices, and documents referenced in therein are hereby incorporated into this Contract.

19.4 Survivorship.

All license and purchase transactions executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that, by their sense and context, are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

19.5 Assignments.

19.5.1 Vendor may not assign this Contract without the prior written consent of WSDOT.

19.5.2 WSDOT may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington.

19.5.3 All subcontracts and vendor agreements of Vendor shall be assignable to WSDOT, and Vendor shall provide copies of all such subcontracts and vendor agreements to WSDOT within ten (10) Calendar Days of assignment.

19.6 Publicity.

19.6.1 The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's products by WSDOT and shall not be so construed by Vendor in any advertising or other publicity materials.

19.6.2 Vendor agrees to submit to WSDOT, all advertising, sales promotion, and other publicity materials relating to this Contract or any Product furnished by Vendor wherein WSDOT's name is mentioned, language is used, or Internet links are provided from which the connection of WSDOT's name therewith may, in WSDOT's judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity

or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of WSDOT prior to such use. Nothing herein shall preclude Vendor from citing the Work performed under this Contract in resumes or proposals for future work with WSDOT or other entities.

19.6.3 Either party may use the other party's name and logo (except for the state Seal) in advertising, sales promotion, and other publicity materials relating to this Contract, without royalty, provided that this Contract and the relationship between the parties is not misrepresented.

19.6.4 The provisions in this Article shall survive the expiration or termination of this Contract.

19.7 Independent Status of Vendor.

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit, which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

19.8 Entire Agreement.

This Contract, the RFP, the Proposal, the License, and any exhibits, appendices or attachments thereto are hereby incorporated by reference herein as if fully set forth. Said documents set forth the entire agreement between the parties with respect to the subject matter hereof, and any understandings, agreements, representations, or warranties not contained in this Contract or in a property executed Amendment, or written Amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or specifications of this Contract will be effective without the written consent of both parties.

19.9 Modifications and Amendments.

No modification, amendment, alteration, addition, or waiver of any Section or condition of this Contract shall be effective or binding unless it is in writing and signed by the WSDOT Contract Administrator and the Vendor representative authorized to execute such modification, amendment, alteration, addition, or waiver and bind the Vendor to the obligations set forth in said modification, amendment, alteration, addition, or waiver. Only the WSDOT Contract Administrator shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any provision, benefit or obligation of this Contract on behalf of WSDOT.

19.10 Waiver.

Waiver of any breach of any term or condition of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the WSDOT Contract

Administrator and the Vendor representative authorized to waive, modify, or delete such term or condition.

19.11 Severability.

If any term or condition of this Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications, which can be given effect without the invalid term, condition, or application; to this end, the terms and conditions of this Contract are declared severable.

19.12 Governing Law.

This Contract shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act or any substantially similar law is enacted as part of the law of the State of Washington, said statute will not govern any aspect of this Contract or any license granted hereunder, and instead the law as it existed prior to such enactment would govern. Unless otherwise required by law, the jurisdiction for any action hereunder shall be exclusively in the Superior Court for the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

19.13 Order of Precedence.

In the event of any conflicts, resolution shall be resolved in the following order of precedence:

19.13.1 Any applicable Federal law.

19.13.2 Any applicable State law.

19.13.3 This Contract (K_____), and any amendment thereto.

19.13.4 The RFP, ACQ-2009-0530-RFP..

19.13.5 Vendor's Proposal Notwithstanding the order of precedence listed above, additional details and more stringent requirements contained in a lower priority document will control unless the requirements of the lower priority document present an actual conflict with the requirements of the higher level document. On plans and working drawings calculated dimensions shall take precedence over scaled dimensions.

19.14 Uniform Commercial Code (UCC) Applicability.

19.14.1 Except to the extent the Sections of this Contract are clearly inconsistent, this Contract shall be governed by any applicable sections of the UCC as set forth in Title 62A RCW.

19.14.2 To the extent this Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to do so would result in an absurdity.

19.14.3 In the event of any clear inconsistency or contradiction between this Contract and the UCC, the terms and conditions of this Contract take precedence and shall prevail unless otherwise provided by law.

19.15 Antitrust Violations.

Vendor and WSDOT recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the purchaser. Therefore, Vendor hereby assigns to WSDOT any and all claims for such overcharges as to goods, Products, and Services purchased in connection with this Contract, except as to overcharges not passed on to WSDOT resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Contract. The provisions in this Section shall survive the expiration or termination of this Contract.

19.16 Attorneys' Fees and Costs.

In the event of any controversy, claim, or dispute arising out of this Contract, each party shall be solely responsible for the payment of its own legal expenses, including but not limited to, attorney's fees and costs.

19.17 Contract Execution.

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

19.18 Counterparts.

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

The remainder of this page intentionally left blank.

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

State of Washington

Vendor Name

Department of Transportation

Signature

Signature

Bill Ford

Print or Type Name

Date

Print or Type Name

Date

Assistant Secretary, Finance and
Administration

Title

Title

APPROVAL AS TO FORM:

Patricia K. Nightingale

Assistant Attorney General

Exhibit A
Performance Measures

Exhibit B**Sample Contract Bond**

[COMPANY LOGO]	[NAME OF BOND]	NAME OF INSURANCE COMPANY NAME OF HOME OFFICE AND LOCATION
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KNOW ALL BY THESE PRESENTS, That we, _____ (called Principal), as Principal, and [NAME OF INSURANCE COMPANY] a [TYPE OF BUSINESS] corporation of Washington (called Surety), as Surety, are held and firmly bound unto the State of Washington (called Oblige) in the sum of _____ dollars (\$_____) for the payment whereof Principal and Surety bind themselves, their legal representatives, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a written Public Works Contract dated _____, 2009, with Oblige for Contract Number K_____, dated _____, 2009, for Toll Collection System Supply, Installation, and Maintenance between the Washington State Department of Transportation (WSDOT) and _____, a copy of which Contract is hereto annexed and made a part of hereof as fully as if set forth herein:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That, if Principal shall faithfully perform such Contract and pay all persons who have furnished labor or material for use in or about the improvement and shall indemnify and save harmless Oblige from all costs and damage by reason of Principal's default or failure so to do, then this obligation shall be null and void; otherwise it shall remain in full force and effect. Surety hereby waives notice of any alteration, extension or forbearance as to any of the terms of the Contract other than the terms of payment thereunder, made or extended by Oblige or Principal.

NO RIGHT OF ACTION shall accrue upon or by reason hereof to, or for the use or benefit of, anyone other than the Oblige herein named.

NO SUIT, ACTION OR PROCEEDING by the Oblige to recover on this bond shall be sustained unless the same be commenced within two (2) years following the date on which Principal ceased work on said Contract.

Signed and sealed this _____ day of _____, 2009.

[NAME OF PURCHASER]

By: _____
Principal

[NAME OF INSURANCE COMPANY]

By: _____
Attorney-in-Fact

June 17, 2009

Exhibit C
Software License

June 17, 2009

Exhibit D
Escrow Agreement